

# “Lost Generation” in South Sudan: A Broader Approach Toward Peace Urgently Needed

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## ABSTRACT

What began in 2013 as the eruption of a political struggle between forces loyal to President Salva Kiir, a member of the Dinka ethnic group, and then–vice president Riek Machar, a Nuer, has splintered into a multifaction conflict. A dizzying array of armed groups have entered the fray, many unmotivated by political leverage that conventionally brings parties to a conflict to the negotiating table. Two years and tens of thousands of deaths after the 2015 signing of the Agreement on the Resolution of the Conflict in South Sudan, with no substantive progress toward meetings its terms, it is unrealistic to think that Intergovernmental Authority on Development’s recently announced High-Level Revitalization Forum will be sufficient to address the drivers of this conflict. Current policy proposals are poorly designed to address escalating intercommunal conflict and cattle raiding, both devastating forms of violence. As measures at the international level continue to be pursued, the conflict resolution strategy should also include a more comprehensive approach incorporating local actors in order to build momentum toward long-term stability. In this article, we highlight gaps in the current dialogue around a political solution in South Sudan, as well as domains that must be part of the next push for peace. (*Disaster Med Public Health Preparedness*. 2019;13:663–671)

**Key Words:** South Sudan, civil war, humanitarian aid, conflict resolution, pastoralists

## BACKGROUND AND INTRODUCTION

After a January 2018 visit to South Sudan, Henrietta Fore, executive director of the United Nations International Children’s Emergency Fund (UNICEF), declared a “lost generation” and warned that “we might lose up to a quarter of a million children” as the country heads into its dry season.<sup>1</sup> As the situation in South Sudan deteriorates, there is no political solution in sight. The most recent tallies estimate over 50 000 deaths due to the conflict and up to 2 million internally displaced persons,<sup>2</sup> with nearly 2.5 million refugees having fled to neighboring Uganda, Ethiopia, Sudan, Kenya, Democratic Republic of the Congo, and the Central African Republic.<sup>3,4</sup> Widespread food insecurity poses another threat to the civilian population, and rampant inflation combined with restricted import capacity due to a lack of security exacerbate the food shortages. The Integrated Food Security Phase Classification estimated that 5.1 million people, nearly half of South Sudan’s population, would be classified as severely food insecure by March of 2018—the highest number ever recorded in the country.<sup>5</sup> Armed forces and armed groups continue to target civilians along ethnic lines and commit horrific atrocities: killing, perpetrating sexual violence, destroying property, and looting livestock.<sup>4,6</sup>

The tragic implosion of the world’s youngest nation is most widely told as the following narrative: In

December 2013, just over 2 years after South Sudan voted for its independence, fighting broke out in Juba between members of the elite Presidential Guard after a political struggle between President Salva Kiir, a member of the Dinka ethnic group, and then–vice president Riek Machar, a member of the Nuer ethnic group. Violence spread rapidly throughout the country. However, if one asked many South Sudanese about their lived experience of violence, a different picture would likely emerge. As Jok Madut Jok of the Sudd Institute wrote of the years following the 2005 Comprehensive Peace Agreement between North and South: “For some communities . . . independence has only ended a certain kind of war, but has left sources of insecurity most relevant to them unmitigated—the “mini-wars” that continued to occur between rival ethnic groups and communities.”<sup>7</sup>

The current dialogue around a political solution in South Sudan largely fails to take these local “mini-wars” into account. Although the primary parties to the conflict are the Sudan People’s Liberation Army (SPLA), government forces under President Salva Kiir, and the Sudan People’s Liberation Army in Opposition (SPLA-IO), opposition forces under Riek Machar, the conflict is far more fractious and regionalized than simple Dinka-on-Nuer narratives suggest. The opposition is extremely fragmented,

with numerous third-party factions and civilian armed groups.<sup>8-10</sup> A significant proportion of violence is being committed at a local level outside of the power struggle between government and opposition forces, perpetrated by actors whose motivations have little to do with political ambitions. The impact of these dynamics on the lives of many South Sudanese is an element missing from many analyses of this conflict.

Since the December 2013 outbreak of violence in Juba, the international community has seen few substantive successes in negotiating with political elites, and the conventional arsenal of diplomatic tools and deterrents has proven ineffectual at mitigating violence. Multilateral processes are stalled either by failure to reach consensus at the United Nations (UN) Security Council or by perpetual obstruction by the Government of South Sudan and SPLA-IO representatives. After 2 years with hardly any implementation of its key provisions, the 2015 Agreement on the Resolution of Conflict in South Sudan (ARCISS), mediated through efforts by the Intergovernmental Authority on Development (IGAD), is failing. The Transitional Government of National Unity of the Republic of South Sudan put in place by the agreement has demonstrated little genuine progress toward reform.<sup>9,11</sup>

A renewed commitment to a political solution is required and must be broader in scope than the current approach. Earlier this year, President Salva Kiir launched a national dialogue,<sup>12</sup> purportedly designed to address a wide range of concerns not included in ARCISS and to offer complementarity between “top-down” and “bottom-up” approaches. However, without the participation of opposition groups—who have described the dialogue as “bogus”<sup>13</sup>—the initiative lacks credibility, and it has come under additional criticism for lacking sufficient representation and buy-in of diverse groups and regions, as well as for the vagueness in its aims and process.<sup>14-16</sup> UN Representatives, including the Assistant Secretary-General for Peacekeeping, El Ghassim Wane, have criticized the South Sudanese government’s hypocritical behavior<sup>17</sup> in announcing the dialogue as heralding a shift toward inclusivity while simultaneously blocking media websites for voicing criticism of authorities. However, the dialogue’s purported aims address a need to look beyond the arena of political elites to the intercommunal conflicts that exacerbate the violence consuming South Sudan. As meaningful achievements at the international level continue to be pursued, the conflict resolution strategy should also include a more comprehensive, community-based approach that incorporates local actors and builds momentum toward long-term stability.<sup>18-20</sup>

### STALLED AT THE SECURITY COUNCIL

Even relatively conservative measures requiring no troop commitments from member countries such as an arms embargo and targeted sanctions have failed to pass the UN

Security Council. The United States announced that it would impose a unilateral arms embargo to South Sudan; however, this gesture is effectively symbolic, given that the United States does not supply arms to the warring nation.<sup>21,22</sup> Without consensus at the Security Council, the measure has little practical effect. In December 2016, a draft resolution championed by former US Ambassador to the UN Samantha Power proposing a 1-year ban of supply, sale, or transfer of arms to the Government of South Sudan or SPLA-IO failed to gain the votes necessary to pass the UN Security Council. Among those in abstention were China and Russia, who recently reiterated their firm opposition in response for renewed calls for an arms embargo by Nikki Haley, US Ambassador to the UN.

At an April 2017 Security Council meeting, Russia’s Deputy UN Ambassador Petr Ilchev reiterated Moscow’s opposition to ramping up sanctions, saying peace “will not be brought about by a Security Council arms embargo but rather by targeted measures to disarm civilians as well as to demobilize and reintegrate combatants.”<sup>23</sup> Disarmament campaigns have a disastrous history in South Sudan: the 2006 campaign in Jonglei, for example, resulted in nearly 2000 lives lost—approximately as many deaths as the infamous 1991 Bor Massacre, in which armed Lou Nuer youth fighting under the direction of Riek Machar mounted a devastating raid on Bor Dinka in the heartland of SPLA leader John Garang.<sup>24</sup> Though disarmament must be a long-term goal, it is not a viable short-term response to the violence. Then-UN Secretary General Ban Ki Moon himself concluded as much less than a year ago in a November 2016 Special Report: “it would be ill timed to engage in security sector reform or disarmament, demobilization and reintegration efforts in the absence of an inclusive political process.”<sup>25</sup>

Meanwhile, China’s deputy UN ambassador Wu Haitao offered the perplexing statement, “it is important for the Security Council to send out more positive and enthusiastic messages.”<sup>26</sup>

### ARCISS DEAL FOR PEACE IS DEFUNCT

The 2015 ARCISS continues to be the primary basis of the dialogue around prospects for a political solution in the country. In the summer of 2017, the 31st Extra-Ordinary Summit of IGAD laid out a High-Level Revitalization Forum to “[implement fully] the Peace Agreement and to develop a revised and realistic timeline and implementation schedule toward a democratic election at the end of the transition period.” ARCISS is the only measure invoked in the most recent Security Council Presidential Statement on South Sudan, which stated “its strong support for the Intergovernmental Authority on Development’s (IGAD) High-Level Revitalization Forum (HLRF) for the Agreement.”<sup>27-29</sup>

Yet 2 years after the signing of the agreement, statements calling for “swift” and “unconditional” cooperation with its terms are tragically unrealistic. All parties to the conflict have ignored the pillar provisions of ARCISS, including ceasefire and protection of humanitarian assistance. It is not clear that the provisions laid out in the agreement—even if they could be achieved—would be sufficient to address the drivers of intercommunal conflict. Moreover, a recent report by the Small Arms Survey found that unintended consequences of the security provisions outlined by ARCISS may have contributed to the spread of violence into Greater Equatoria by not explicitly limiting the size or location of Machar’s military forces. According to the report, ambiguities in the agreement’s cantonment provisions enabled Machar to expand SPLA-IO operations into Western Equatoria.<sup>8</sup>

Since the signing of the agreement, President Salva Kiir has moved to reorganize South Sudan’s administrative districts from a 10-state to an ambiguous 32-state system, a measure many have argued delineates regions along ethnic boundaries, exacerbating conflict and inflaming tensions over accusations that the measure is an effort to place more territory under Dinka control. Under the previous 10-State model, 25% of South Sudan was controlled by the Dinka, a proportion nearly doubled under the new system, in which 42% of land area is Dinka-controlled.<sup>30-33</sup>

### TRADITIONAL NORMS ARE BEING FLAUNTED

Attacks on humanitarian assistance workers are war crimes. Yet neither threat of prosecution nor the repeated statements of condemnation made by UN bodies have deterred armed groups—including state forces—in South Sudan. Obstruction of humanitarian assistance is so widespread that aid must be delivered by air drop in some locations.<sup>10</sup> This adds to the high cost of humanitarian relief, which is already impaired by the lack of all-weather roads that prevents access to large parts of the country during the 6-month rainy season. Partly because of this lack of security, as of 2017 only 14% of the counties in South Sudan had the requisite minimum measles vaccination coverage. Thirty-three percent of counties have less than 20% of the minimum coverage, leaving over half a million (648 000) children at risk.<sup>6</sup> State and opposition forces, as well as other armed groups, have denied access to aid organizations; denied civilians access to medical facilities; attacked, destroyed, and looted health care facilities; and attacked and abducted aid workers.<sup>34</sup> At least 82 aid workers, mostly nationals, have been killed since December 2013, and 15 have been killed in the first half of 2017 alone, earning South Sudan the ranking of worst country for incidents against aid workers in the past 2 years. In 2016, there were more than 4 times as many shooting attacks against aid workers in South Sudan than there were in the next-ranking country, Afghanistan.<sup>35</sup> Adding insult to injury, in 2017 the Government of South Sudan raised humanitarian aid worker

fees 6-fold, from \$600 to \$3500, after outcries at a more egregious measure to increase them to \$10 000; meanwhile, the government allocated over half of its budget to military spending.<sup>23,36</sup> The humanitarian situation subsequently became so acute that, as of early 2018, the Government of South Sudan has been forced to temporarily reverse its position and waive these fees entirely.<sup>37</sup>

### PEACEKEEPERS ARE NO PANACEA

Peacekeepers, while part of a long-term solution, cannot replace a genuine political process. As one South Sudanese diplomat stated, “Ultimately, it is a political problem and 4000 more [peacekeepers with] the Regional Protection Force (RPF) addresses some symptoms, not the problems.”<sup>38</sup> The United Nations Mission in South Sudan (UNMISS) has approximately 12 500 troops in the country,<sup>39</sup> but conditions are far from optimal for their mission, which has been heavily criticized for its repeated inability to protect the civilians under its care.<sup>40</sup> UNMISS faces some of the same difficulties that the African Union–United Nations Hybrid Operation did in Darfur—namely, that with no operative ceasefire, political agreement, or meaningful consent from the government, there is no real peace to keep.<sup>41</sup> A 4000-troop Regional Protection Force only began to deploy in late 2017, nearly a year after it was authorized by a Security Council resolution, because of prolonged resistance from the Government of South Sudan, which has accused peacekeepers of interfering in the country’s affairs.<sup>42</sup> Although UNMISS troops are authorized to use force to protect civilians, trust in the peacekeeping force was gravely undermined by an incident in February 2016 in which “external armed elements,” including SPLA fighters, breached a Protection of Civilians Camp in Malakal. Encountering essentially no resistance from UNMISS forces, the attackers killed dozens of civilians, including 2 Medecins Sans Frontieres staff members; wounded over one hundred, and destroyed huge areas of the camp. The event prompted a UN special investigation as well as numerous reports by humanitarian aid organizations, which described failures including severe delays in response of up to 16 hours, as well as the decision to actively block one of the main exits through which camp inhabitants were attempting to escape to safety.<sup>43</sup> Since the appointment of David Shearer as Special Representative for South Sudan in December 2016, UNMISS has begun to take a more forceful stance to enforce their mandate.<sup>44</sup> Progress with the long-awaited deployment of the Regional Protection Force was a glimmer of hope in an otherwise bleak situation, but it may be short-lived. On August 20, 2017, President Salva Kiir announced that he would reconsider his decision, unexpectedly accusing the RPF of attempting to occupy the Juba International Airport and reiterated the government’s “right” to cancel their deployment. Later that week, the Government of South Sudan grounded planes belonging to UNMISS peacekeepers.<sup>45,46</sup>

## A BROADENED APPROACH TOWARD PEACE IN SOUTH SUDAN

President Kiir's proposed National Dialogue is riddled with shortcomings but raises a critical point: ARCISS addresses only a sliver of the complex nexus of tensions fueling violence in the country. The need for a political solution in South Sudan is urgent. Those seeking it must look beyond ARCISS, balancing negotiations among the political elite with community-based efforts in order to bring peace. Solutions must be targeted, concrete, and viable in spite of the multiplicity of parties to the conflict.

Despite these challenges, the same cultural and historical forces that drive intercommunity violence present opportunities for conflict de-escalation that may well prove more viable in the short term than the gridlocked approaches currently being put forward at the United Nations. What would be required for such an initiative to amount to more than empty words? We highlight several domains as opportunities and caveats for addressing intercommunal conflict in South Sudan.

### INTERCOMMUNITY VIOLENCE IN RURAL SOUTH SUDAN

Among pastoralist communities in rural areas such as Jonglei, a remote and ethnically diverse region in eastern South Sudan, cattle raiding takes a grave toll on civilian security.<sup>47</sup> Pastoralists' livelihoods and social systems revolve around their prized herds of cattle, which provide nutrition, wealth, and bride payments.<sup>48,49</sup> These highly valued animals are also at the center of great bloodshed. Although intertribal cattle raiding predates the British colonial presence among the Murle, Lou Nuer, Jikany Nuer, and Dinka pastoralists who inhabit the region, attacks were "traditionally" conducted with spears, and killing was tightly restricted by social and ritual norms.<sup>50</sup> But decades of war have intensified raids to an unprecedented scale, and years of endemic conflict have eroded the social institutions that once governed raiders' behavior.<sup>20,51,52</sup> The region is flush with weapons, and heavily armed warriors mount deadly attacks on a routine basis, fighting with semiautomatic weapons and rocket-propelled grenades and coordinating attacks by satellite phone.<sup>47,53</sup>

As recently as November of 2017, an attack staged by Murle raiders caught the attention of David Shearer, Head of UNMISS and Special Representative of the Secretary-General for South Sudan, who condemned the killings of nearly 50 Dinka civilians.<sup>54</sup> Two separate incidents made it into the international news cycle in 2017 and 2016, when Murle gunmen carried out raids against Nuer villages in Gambella across the Ethiopian border.<sup>55-57</sup> Nearly 200 Nuer were killed in the 2016 attack, during which raiders abducted 160 children and stole thousands of livestock. With neither adequate provision of security to prevent these attacks nor functioning judicial systems to redress them, such raids trigger

cycles of retaliatory counterraiding that ravage feuding communities.<sup>58</sup> In some cases, intercommunal raids have claimed thousands of lives in a period as short as a month.<sup>59</sup> Neglecting local conflicts has profound consequences, for the grievances they sow create volatile civilian militia bases susceptible to manipulation by political leaders. Since the second Sudanese civil war, both Kiir and Machar have recruited armed herders to fight on their behalf, relying on these groups for military force.<sup>60</sup>

### "BRIDGING THE GAP BETWEEN ENTHUSIASM AND KNOWLEDGE"

Since the successful 1999 Wunlit Peace and Reconciliation Conference during the Second Civil War, community peace initiatives incorporating "customary" conflict resolution procedures and "traditional authorities" have proliferated, and peace-building has become a common component of relief and development programming. Unlike the Wunlit meetings, these efforts have largely been mediated by UN agencies and international NGOs. The historic Wunlit peace meeting gathered 360 delegates from Dinka communities in the Bahr el Ghazal region and Nuer communities in the Western Upper Nile region, including chiefs, traditional leaders, women, and youth, under the coordination of the New Sudan Council of Churches.<sup>19,61</sup> These proceedings were backed by extensive preparation and community consultation, drew heavily on traditional reconciliation methods and rituals, and resulted in a durable ceasefire between Dinka and Nuer communities, as well as agreements regarding the return of abductees and shared management of grazing land. The Wunlit meetings should indeed be consulted as a model for community peacebuilding; however, subsequent "grassroots" initiatives have largely failed to reproduce the success of Wunlit, and have in part been undermined by an inadequate understanding of customary proceedings. As a Rift Valley Institute Report states, "International organizations sponsoring peace building do not always speak the same moral and political language as the people they are assisting."<sup>19</sup> Why have international nongovernmental organizations been unable to recognize and build upon traditional knowledge? There may be multiple reasons, including the fact that local implementing partners should be partners in more than implementation, and instead should be closely involved in intervention design in order to better understand and respond to local contexts and realities.

What exactly is customary law, then, and who are genuinely legitimized "cultural authorities"? Francis Deng, South Sudan's first ambassador to the United Nations, described "bridging the gap between enthusiasm and knowledge," referring to the vague understanding many outside parties have about what customary law actually is, let alone how to approach its systematization.<sup>62</sup> Customary law is a point of national pride for South Sudan, showcased in government rhetoric and enshrined in the 2005 Interim Constitution.



Support for customary law is also widespread among non-governmental organizations and policymakers, whose knowledge of what precisely these laws contain may, however, be somewhat less than robust. Recognition of the need to clarify the nature of customary law has led the United Nations Development Programme and the Government of South Sudan to propose “ascertainment” as a first step toward building the foundation for a community-validated approach to customary justice. Ascertainment, or the “self-statement” of customary law, is a process in which communities participate in the conversion of oral customary law into written form.<sup>63</sup> However, this approach faces significant challenges. A 2010 report by the Rift Valley Institute and United States Institute of Peace documented the potential for serious unintended consequences of ascertainment.<sup>64</sup> First, customary negotiations are an inherently fluid process, and any initiative to capture customary law in written form may in practice result in rigid formulae and itemized penalties for offenses, damaging the prospects for genuine reconciliation. More seriously, the report’s authors argue that the process is inherently politicized, motivated by the Government of South Sudan’s desire to exercise more power over customary courts. And most dangerously, the report found evidence to suggest that ascertainment has the potential to deepen ethnic divisions as groups race to develop their own formalized customary legal systems and promote them against others.<sup>64,65</sup>

The most widely accepted form of customary restitution among pastoralists in the region is centered on bloodwealth payments. During the arbitration of a bloodwealth payment, a mediating party facilitates negotiations in which the circumstances of the crime as well as the individual attributes of the perpetrator and victim are taken into account in order to arrive at the number of cattle owed to the aggrieved party.<sup>66,67</sup> Context specificity and adaptability are essential elements of this process. One of the most significant inventions of colonial policies was to eliminate the dynamic aspect of these proceedings by removing negotiation from bloodwealth settlements, implementing instead a formulaic set of fines consisting of 50 head of cattle, 10 of which were payable to the government. This seriously undermined the inherent procedural benefits of traditional forms of negotiation.<sup>52,68,69</sup> Bloodwealth negotiations are fundamentally restorative rather than retributive in nature and have a crucial social function, serving as a forum for mediation between parties to the disagreement in order to re-establish equilibrium and de-escalate the seeds of bitterness that perpetuate violent acts of vengeance. As Evans-Pritchard wrote in his iconic monograph on Nuer society, “It is the rule of such gatherings that everything a man has in his heart against others must be revealed and no bitterness kept secret.”<sup>70</sup>

In contrast, penal sanctions are perceived as meaningless by many pastoralists. Writing in 1954, anthropologist Paul Howell described how the idea of punitive measures was not merely distasteful but completely nonsensical to the Nuer:

The average Nuer does not understand why imprisonment should be inflicted at all, especially if compensation is also paid to the injured party...He has used the cattle of his lineage to marry a wife, he has killed her, lost the cattle, and compromised his position in posterity...Once paid, what need is there for fine or imprisonment?<sup>69</sup>

These perceptions and values appear to persist in a contemporary context as well. According to a report by David Deng of the South Sudan Law Society, 58% of rural South Sudanese favor compensation for a murder, while 38% favor execution. Among the subset of respondents from Pibor, a county whose population is mostly from the historically marginalized ethnic group the Murle, approximately 85% opposed the death penalty.<sup>71</sup> Anecdotally, experts with longstanding field experience in South Sudan report an even stronger bias toward reconciliatory mechanisms and compensation.<sup>64,65</sup> These discrepancies hold serious implications for intercommunal violence and instability in rural South Sudan. Statutory “justice” delivered along purely punitive lines may in fact do little to assuage the resentments of the aggrieved or to prevent them from seeking fulfillment of a sense of culturally valid justice by alternative means.

Similarly, who, precisely, are “traditional authorities”? Understanding the role of chiefs in modern customary courts as recognized by South Sudanese law is in important ways distinct from a consideration of the cultural authorities who truly wield power at the local level. This informal, dual system of “government chiefs” versus those chiefs genuinely endorsed by communities came into being during British colonial rule with the Chiefs’ Courts Ordinance of 1931, which established chiefs’ legal authority in customary courts, “provided that such Native Law and Custom is not contrary to justice, morality or order.”<sup>66,71</sup> Naturally, determination of what constitutes “custom...contrary to justice, morality, or order” has been highly contested ever since. Though in some regards an important empowerment formally recognizing the role of chiefs in South Sudanese society, the act was largely seen as an attempt by British colonial officials to turn traditional leaders into “agents of the state” by salarizing them and absorbing them into government structures.<sup>62,66</sup> Wise to this fact, many communities appointed token figures who were chosen precisely because they were *not* important or influential, or otherwise simply because they spoke a bit of Arabic, the language used by the early colonial administration. These government chiefs acted as liaisons with colonial officials while communities continued to operate under the parallel power structures of genuinely respected leaders as they had all along.<sup>68,72</sup>

In some ways, little has changed. As state-authorized courts operate with varying degrees of dysfunction, cultural authorities entirely outside of these systems still play an important role in contemporary pastoralist society. However, these figures are poorly understood. Although the scope and structure of their authority has been dramatically altered by South

Sudan's protracted conflicts, traditional authorities and "prophets" wield a powerful influence that has enabled some to establish relative stability in their communities even within the chaos of the current crisis. In some cases, the power of these individuals is recognized by the highest state officials: for example, when Dinka youth raided cattle belonging to the Nuer prophet Gatdeang in 2008, President Salva Kiir himself responded with great deference, dispatching SPLA battalions and policemen to guard the prophet and his community.<sup>64,72-74</sup>

### THE RURAL JUSTICE VACUUM

Words like "patchwork" and "amalgam" have been described to use South Sudan's pluralistic legal system, which consists of both statutory and customary courts, each of which draws on numerous legal traditions, from the vestiges of British colonial law to the customary laws of over fifty ethnic groups.<sup>64,75</sup> Throughout the Second Sudanese Civil War, justice in South Sudan was administered almost exclusively by traditional chiefs. Several acts passed in the 2000s set out to establish a formal judicial structure: The Judiciary Act of 2008 organized a statutory system consisting of The Supreme Court in Juba, 3 regional Courts of Appeal, and a High Court in each of the 10 states. (It is unclear how or if the judicial system will adapt to President Salva Kiir's introduction of a 32-state system.) Although the act designates statutory courts in every county and *payam* (the second-lowest administrative division), many counties lack such courts, and not a single statutory court exists at the *payam* level. The customary court system was outlined in the 2009 Local Government Act, which establishes customary courts at the county, *payam*, and *boma* (village) levels, presided over by traditional chiefs.<sup>71,75</sup>

But the judicial structures laid out by South Sudanese law are quite different than those that operate in reality. In practice, centralized state authority has only limited reach into the rural regions of the country, where most of the population resides. The result is that judicial structures are extremely heterogeneous from district to district, with each area governed by a complex and regionally-specific combination of state and cultural authorities. In some places, a half-hearted attempt to officialize the role of cultural authorities has resulted in their quasi-integration into the state apparatus, and some may be salaried for certain civil functions. In other regions, the role of cultural authorities is unrecognized by officials but nevertheless functionally unchanged. Despite the fact that the Local Government Act stipulates that customary courts "shall not have the competence to adjudicate on criminal cases," it is estimated that up to 90% of civil and criminal cases are handled by customary courts, which hear cases of all types including homicide. Chiefs in customary courts effectively operate without oversight, routinely invoking the Penal Code, and have been known to sentence individuals to death despite the fact that they have no legal training or formally recognized authority to do so.<sup>71,75</sup>

In spite of these serious flaws, customary courts play an indispensable role in conflict mediation. Since the need for mechanisms to resolve disputes vastly exceeds access to statutory courts, customary courts fill a critical gap.<sup>76</sup> Recently, a troupe of Shakespearean actors garnered great popularity in remote areas where there is little to no functional access to justice by holding mock trials in which parties to a dispute voice their grievances and members of the theater company mediate, proposing measures for restitution.<sup>77</sup> Customary courts hear cases far more quickly and operate in a way that is far more accessible—both physically and with respect to comprehension—to most rural South Sudanese. The state's failure to provide access to justice has devastating implications for security in rural areas, as individuals and communities resort to revenge killings. Recent restrictions placed on customary courts are therefore extremely alarming, as these regulations are imposed in the absence of any viable alternatives. South Sudanese law no longer sanctions the negotiation of bloodwealth compensation outside of statutory courts: the 2008 Penal Code Act combined criminal and civil penalties into one process. Technically, parties to a dispute are required to wait for a decision from a judge in the regional High Court before negotiating a settlement. In practice, however, cases rarely make it to criminal court, or only do so after years of delay. This presents a serious barrier to peace as victims' families take the execution of justice into their own hands, fueling devastating cycles of violence that engulf entire communities.<sup>47,71,78</sup>

The lack of access to justice is compounded by equally serious gaps in enforcement. The Government of South Sudan allocates over half of its budget to security spending but a shockingly paltry 3% to health, and has 450 police personnel per 100 000 population in contrast to only 1.5 doctors and 2 nurses.<sup>79</sup> Despite these shameful statistics, there is little meaningful police presence in rural areas. The state's failure to provide security strongly incentivizes civilians to arm themselves for protection. In Eastern Equatoria, 77% percent of pastoralist households owned firearms, identifying self-protection and protection of their village as their primary reason for owning weapons.<sup>80</sup> Where a police presence does exist, these state officials are widely distrusted by the local populace. In a 2010 survey, only 11% of respondents reported they would choose to report a crime to the police.<sup>80</sup> This distrust was validated by a Wau County judge in an interview with the Rift Valley Institute: "People don't believe in police or government, but only in the word of the chief. And especially in cases of compensation, even if we settle the case here, the chief is the one to collect the cows. If you send the police it will cause a new problem!"<sup>64</sup>

### CONCLUSION

It is time to adopt a more inclusive approach to the peace process, one that integrates the communities whose grievances fuel much of the violence affecting the everyday lives of civilians throughout the country. Even if negotiations at the level of

political elites were not stalled, they would be insufficient to address the potent community-level drivers of conflict in South Sudan. Local dynamics have been underrepresented in the current policy dialogue, but they must become part of the debate around comprehensive strategies for conflict de-escalation.

Such a process cannot supplant a national political solution, nor resolve SPLA and SPLA-IO disputes. However, measures such as fostering the meaningful involvement of legitimate cultural authorities, increasing access to functioning judicial systems, and strengthening enforcement in rural regions would be positive steps toward deescalating intercommunity tensions. As gaps in South Sudan's statutory court system are addressed, locally relevant concepts of justice and forms of compensation should also be incorporated into the procedures used to resolve raiding incidents. Comprehensive reports on customary law in South Sudan have been authored by anthropologists, legal scholars, regional experts at the Rift Valley Institute, World Vision, and the United States Institute for Peace, among others. Close consultation with these experts and local partners is indispensable.

Community-level strategies must be developed with caution and be based on an ethnographically rigorous, context-specific understanding of local dynamics. Inappropriately applied understandings of customary law and traditional conflict resolution mechanisms may be worse than no attempts at all. Interventions that are out of touch with local realities run the risk of inflaming tensions through harmful unintended consequences and of delegitimizing future attempts to hold desperately needed intercommunity negotiations. Like the High-Level Revitalization Forum, these measures would require tremendous commitment from a diverse array of actors and encounter a host of obstacles and complexities. But as escalating violence and hunger threaten civilians throughout the country, there is no time to waste. The international community has an imperative to pursue any underexplored possibility for conflict de-escalation. Sadly, until the gridlock of self-interests among political elites and national interests at the UN Security Council can be overcome, there may be few other viable options for South Sudan.

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